

AMENDED IN SENATE MARCH 25, 2010

**SENATE BILL**

**No. 1188**

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**Introduced by Senator Wright**

February 18, 2010

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An act to add Division 24 (commencing with Section 90000) to the Financial Code, relating to debt ~~negotiation~~ *settlement*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1188, as amended, Wright. Debt ~~negotiation~~ *settlement* organizations.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would make it unlawful for a person to provide debt ~~negotiation~~ *settlement* services, as defined, unless it, among other things, obtains and maintains insurance coverage, as specified, and files a form establishing proof of this required insurance coverage with the Commissioner of ~~Financial Institutions Corporations~~ along with a filing fee, to be established by the commissioner. The bill would require a debt ~~negotiation~~ *settlement* organization, prior to providing debt ~~negotiation~~ *settlement* services, to enter into a specified written contract with an individual, including, but not limited to, a full and detailed description of the debt ~~negotiation~~ *settlement* services to be performed by the debt ~~negotiation~~ *settlement* organization as well as the estimated date or length of time by which the services are to be performed, and a notice of the right to cancel. The bill would prohibit a debt ~~negotiation~~ *settlement* organization from, among other things, imposing any fees

or charges or receiving any money for ~~debt-negotiation~~ *settlement* services until the individual agrees in writing to those fees or charges and the plan, as defined. The bill would also specify how those fees or charges are to be determined and when they may be collected. The bill would exempt various entities from these provisions. The bill would specify that a violation of these provisions would constitute unfair competition and would authorize any injured individual to bring an action to enjoin and restrain any violation of these provisions and to recover damages. The bill would make these provisions operative on January 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Division 24 (commencing with Section 90000) is added to the Financial Code, to read:

DIVISION 24. ~~CREDIT CARD DEBT NEGOTIATION~~ *DEBT SETTLEMENT ORGANIZATIONS*

CHAPTER 1. DEFINITIONS

90000. As used in this division, the following terms shall have the following meanings:

(a) “Concessions” means the assent to repayment of an unsecured-~~credit card~~ debt-~~in~~ *on* terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(b) “Creditors” means persons to whom an individual owes unsecured-~~credit card~~ debts.

(c) “~~Debt-negotiation settlement~~ organization” or “organization” means a person that provides ~~debt-negotiation settlement~~ services. “*Debt settlement organization*” or “*organization*” does not include any of the following:

(1) *The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law and that practice does not primarily consist of providing debt settlement services.*

1 (2) *The services of a person licensed as a certified public*  
2 *accountant or a public accountant in this state, when the person*  
3 *renders services in the course of his or her practice as a certified*  
4 *public accountant or a public accountant and that practice does*  
5 *not primarily consist of providing debt settlement services.*

6 (3) *A family member of an individual who negotiates*  
7 *concessions, with or without compensation, from the creditors of*  
8 *the individual.*

9 (d) ~~“Debt negotiations settlement services”~~ or “services” means  
10 acting as an intermediary between an individual and one or more  
11 of the individual’s creditors in order to obtain concessions for that  
12 individual’s ~~credit card debt~~ *unsecured debts*, but without holding  
13 or disbursing funds to the individual’s creditors, for a fee to be  
14 paid by the individual.

15 (e) “Debt principal” means the total amount of debt, including  
16 unpaid interest and fees, owed by the individual to a creditor as of  
17 the date of the initial enrollment by the individual in a plan.

18 (f) “Individual” means a natural person.

19 (g) “Multiple pay settlement” means a settlement paid in  
20 installments.

21 ~~(h) “Person” shall have the same meaning as in Section 18.~~

22 (h) *“Person” means an individual, corporation, business trust,*  
23 *estate, trust, partnership, limited liability company, association,*  
24 *joint venture, or any other legal or commercial entity. The term*  
25 *does not include a public corporation, government, or*  
26 *governmental subdivision, agency, or instrumentality.*

27 (i) “Plan” means a program or strategy of ~~debt negotiation~~  
28 *settlement* services that contemplates that creditors will settle ~~credit~~  
29 ~~card~~ *unsecured debts* for less than the full amount owed by the  
30 individual.

31 (j) “Settlement” means an arrangement where a creditor agrees  
32 to accept concessions on an individual’s account resulting from  
33 negotiations conducted on the individual’s behalf by the debt  
34 ~~negotiation settlement~~ organization and the funding of that  
35 arrangement is provided by the payment of funds from the  
36 individual to the creditor.

## CHAPTER 2. REQUIREMENTS

90010. It shall be unlawful for a person to provide debt ~~negotiation~~ *settlement* services unless it does all of the following:

(a) Obtains and maintains at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud, in an amount not less than one hundred thousand dollars (\$100,000). The deductible on this coverage shall not exceed 10 percent of the face amount of the insurance policy coverage.

(b) Is prepared to provide a copy of the insurance coverage required by this section to any party requesting a copy for a fee that does not exceed the cost of copying.

(c) Files a form establishing proof of the required insurance coverage with the Commissioner of ~~Financial Institutions Corporations~~ along with a fee, to be established by the commissioner, in an amount not to exceed the cost of filing the form. These fees shall be deposited in the ~~Financial Institutions State Corporations~~ Fund established in Section ~~265. 13978.6~~ of *the Government Code*.

## CHAPTER 3. CONTRACTS

90020. (a) Prior to providing debt ~~negotiation~~ *settlement* services to an individual, a debt ~~negotiation~~ *settlement* organization shall enter into a written contract with that individual that shall be signed and dated by the individual and shall include all of the following:

(1) A full and detailed description of the debt ~~negotiation~~ *settlement* services to be performed by the debt ~~negotiation~~ *settlement* organization for the individual and the estimated date by which or length of time in which the services are to be performed.

(2) All terms and conditions of payment, including the estimated total of all payments to be made by the individual.

(3) The organization's principal business address and the name and address of its agent in the state authorized to receive service of process.

(4) A clear and conspicuous statement in boldface type, in the immediate proximity to the space reserved for the individual's

signature, that states: “You may cancel this contract within 5 business days after the date the contract is signed.”

(5) A copy of the following “Notice of Right to Cancel” shall be provided to the individual:

NOTICE OF RIGHT TO CANCEL

YOU MAY CANCEL THIS CONTRACT FOR DEBT-NEGOTIATION SETTLEMENT SERVICES WITHIN 5 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION. TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO CANCEL YOUR CONTRACT.

To: \_\_\_\_\_

(Name of Debt-Negotiation Settlement Organization)

At: \_\_\_\_\_

(Address)

BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY CONTRACT, EXECUTED ON: \_\_\_\_\_

(Date Contract Signed)

(Signature of Individual)

(Date)

(Address)

(Phone Number)

(b) The debt-negotiation settlement organization shall provide the individual, at the time the documents are signed, a copy of the completed written contract and all other documents the debt negotiation settlement organization requires the individual to sign.

## CHAPTER 4. FEES

90030. (a) No ~~debt-negotiation~~ *settlement* organization shall impose directly or indirectly a fee or other monetary charge on an individual or receive money from or on behalf of an individual for ~~debt-negotiation~~ *settlement* services until the individual agrees in writing to the fees or other monetary charges and to the plan negotiated by the ~~debt-negotiation~~ *settlement* organization.

(b) The settlement fees and other monetary settlement charges imposed by a ~~debt-negotiation~~ *settlement* organization shall not exceed ~~one-half~~ 30 percent of the difference between the debt principal and the concession agreed upon with the individual's creditor.

(c) In the event of a multiple pay settlement, a ~~debt-negotiation~~ *settlement* organization shall only collect a fee that is based on the amount of the multiple installment payment at the time that the multiple installment payment is made.

(d) A ~~debt-negotiation~~ *settlement* organization shall not collect any fees other than those fees specified in this section and shall collect those fees only after a settlement of an account with the ~~individuals~~ *individual's* creditor has been agreed upon and documentation memorializing the funding of the settlement has been executed.

## CHAPTER 5. PROHIBITIONS

90040. No ~~debt-negotiation~~ *settlement* organization shall do any of the following:

(a) Make or use any false or misleading representations or omit any material fact in the offer or sale of services offered, or engage, directly or indirectly, in any fraudulent, false, misleading, unconscionable, unfair, or deceptive act or practice in connection with the offer or sale of any of its services.

(b) Provide services to an individual without executing a written contract that complies with this division.

(c) Fail to provide copies of all contracts and other documents that the individual is required to sign.

(d) Fail to obtain insurance coverage or fail to make that coverage information available for public inspection.

CHAPTER 6. EXEMPTIONS

90050. This division shall not apply to any of the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(a) A person who engages in debt adjustment to adjust the indebtedness owed to that person.

(b) A title insurer, escrow company, or other person that provides bill paying services if the person does not provide debt settlement services.

~~(b)~~

(c) The following entities or their subsidiaries:

(1) The Federal National Mortgage Association.

(2) The Federal Home Loan Mortgage Corporation.

(3) A bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any state banking regulator.

~~(e)~~

(d) A consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681(a)).

~~(d)~~

(e) Any subsidiary or affiliate of a bank holding company, its employees and its exclusive agents acting under written agreement.

90051. A debt settlement organization shall be exempt from the requirements of Division 3 (commencing with Section 12000), except to the extent that the organization is performing services and activities governed under that division.

CHAPTER 7. VIOLATIONS

90060. (a) A violation of this division is an act of unfair competition within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(b) In addition, any individual injured by a violation of this division may bring an action to enjoin and restrain any violation

1 of this division and to recover damages. Judgment shall be entered  
2 for actual damages. However, in no case shall the judgment be for  
3 less than the amount paid by the individual to the debt-negotiation  
4 *settlement* organization plus reasonable attorney's fees and costs.

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#### CHAPTER 8. OPERATION

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8 90070. This division shall become operative on January 1,  
9 2012.

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